

MINUTES

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE

March 19, 2014

A meeting of the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee of the County of Kaua'i, State of Hawai'i, was called to order by Mason K. Chock, Sr., Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, March 19, 2014, at 2:50 p.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa (*excused at 4:10 p.m.*)
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Mason K. Chock, Sr.
Honorable Tim Bynum, Ex-Officio Member (*excused at 3:49 p.m.*)

Excused: Honorable Jay Furfaro, Ex-Officio Member

Minutes of the March 5, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting.

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Rapozo, and unanimously carried, the Minutes of the March 5, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting was approved.

The Committee proceeded on its agenda items, as shown in the following Committee Reports which are incorporated herein by reference:

CR-FED 2014-16: on C 2014-53

Communication (02/05/2014) from Councilmember Bynum, requesting the presence of the Director of Finance and the Budget & Purchasing Director, for a broad discussion and presentation on the budget trend analysis and identified challenges for the upcoming Fiscal Year 2014-2015 budget session for the County of Kaua'i.
(Received for the Record.)

CR-FED 2014-17: on Bill No. 2530

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Police Department - Chief's Office, Regular Overtime - \$500,000*) (*Received for the Record.*)

The Committee proceeded on its agenda item, as follows:

Bill No. 2531 A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Office of the County Attorney, Consultant Services/Special Counsel - \$500,000*) (*This item was Deferred*)

Chair Chock: We did receive a communication on this Bill through the Chair's request clarifying that this funding is to replenish the County Attorney's Office of what has already been spent, not an authorization or appeal to hire Special Counsel. We did get some communication on the list of services or Special Counsel that it would apply to.

Ms. Yukimura moved to approve Bill No. 2531, seconded by Mr. Kagawa.

Chair Chock: Is there anyone from the community wanting to speak on this item at this time?

LORI L. MARUGAME, Council Services Assistant: We have one (1) registered speaker. Shaylene Iseri.

Chair Chock: Thank you. Shaylene would you like six (6) minutes? Okay.

There being no objections, the rules were suspended to take public testimony.

SHAYLENE ISERI: Good afternoon Vice Chair Chock, and members of the County Council. I am requesting that the County Council received t and his item. I have filed an appeal with the Office of Information Practices (OIP).

The reasons for my filing a violation of the Sunshine Law. If you look at the rule and the spirit of the Sunshine Law the purpose of the Sunshine Law is to allow members of the public to be informed so that they are able to speak in an intelligent manner regarding the item. When we look at the item and the posting it is unclear to me and to many of you what these items are. The whole purpose of holding meetings and posting meetings is for members of the public to obtain that information and I have discussed extensively with Jennifer Brooks of the OIP, who had informed me that the purpose is not for the Councilmembers to get the information, and it cannot be cured after...how much time was that?

Chair Chock: Six (6) minutes total right? How much time was that?

Ms. Marugame: That was only one (1) minute.

Chair Chock: One (1) minute? One (1) minute gone. You have five (5) more minutes.

Ms. Iseri: Okay...where was I now? The purpose of the Sunshine Law states that it is to open up the governmental process to public scrutiny and participation is the only viable/reasonable method of protecting the public's interest. As I look through Bill No. 2531 it is very clear to me and to members of the public when we had this on the agenda before that we cannot discern from the posting who the money is going to be spent on? What case the money is going to be spent on? Were these for fees for investigation? Was it for Special Counsel attorney's fees? Was it for sanctions that attorneys that were hired by the County Attorney were going to be paying for? So none of these items could be addressed by either you Councilmembers, at the last meeting. Now I heard you, Vice Chair Chock, say that you received information regarding how this money is going to be spent. I spoke with Jennifer Brooks, as I was saying that the Council felt, when it was discussing another item that if it could be cured after the posting by providing more information and it was clearly the law, under OIP, that you cannot cure a Sunshine violation once there has been a defective posting. So the fact that you members of the Council have received information that the public, like myself, was not entitled to clearly shows that that cannot cure the defect that I see in Bill No. 2531. And so based on State v. Kanahele it appears that because of the defective posting, while this is not a final reading of the Bill, that we would need a final reading of the Bill and at that time I would file an appeal to indicate that we did not have sufficient information in order to participate in this process. It is clear that five hundred thousand dollars (\$500,000) is a half a million dollars. And I had for illustrated purposes, I had a check and I would analogize your role as a trustee of the County's account. When you look at the check the first thing you have to put on is the date. When was the services rendered? What are we going to pay for? I do not know when I look at the posting. Then you look at who is going to be the payee and I am not able to provide that information either because I cannot know

who I am going to write the check out to. And then there is an amount that you need to put in. I do not know how much that amount is. I do not know for what case. Again, if you look at the bottom where it says memo, for what purpose the item of a check is going to be for, again you cannot fill out that information or the public is unable to fill out that information because it is not present. Now clearly it is my position that it continues to be a violation and in fact I received a letter that was sent to the Council Chair asking him to respond to my appeal and he had ten (10) days to respond to my appeal and he has not responded to it yet. But clearly the appeal is being investigated, that there is information that is requested by the OIP office in order for the Chair to provide that information. As again, going back to five hundred thousand dollars (\$500,000), this is double of the budget that is being requested for this year. It is clear that there appears to be some sort of neglect of informing the County Council during the budget hearing as to what truly is the expenditures. We have just heard that in the Bynum case over five hundred thousand dollars (\$500,000) in attorney's fees have been expended. Five hundred thousand dollars (\$500,000) is double the budget of what was appropriated. And yet, if we see here, I do not know if this is to be paid for the Bynum fund or to be paid for any other fund. It seems very unusual to me because if we had a Bill the how you saw the Shoreline Bill or any other Bill, Affordable Housing Bill, we have tons of pages explaining who, what, when, where, why. I mean just the simple basic questions and here you are asked by the County Attorney, who is supposed to be the legal advisor to the County, who is supposed to have all of this expertise in advising the County a Bill that simply says I want five hundred thousand dollars (\$500,000) to the public and I do not have any explanation on how it is going to be spent to the public. I believe that this item should be, based on State v. Kanahele, that this item should be received because I feel that there was defective posting that the public was unable to scrutinize and participate actively in these items because they were not posted properly. We had another case where the County Attorney actually went against the special counsel. I do not know if you remembered in the Pōhaku case, where Gary Slovin was hired as a Special Counsel and he came from a large firm, Goodsill Anderson and others, a huge law firm, and he wrote an opinion on Pōhaku that disputed what the County Attorney had said. The County then wrote a press release saying that Gary Slovin's opinion was improper. So we have a County official...is that three (3)?

Chair Chock:

Six (6) minutes.

Ms. Iseri:

Okay, I will just close out. So we have a County official disputing a Special Counsel's opinion and clearly that should not be the case because in effect the County is the County and the taxpayers are expending their moneys. Therefore, I ask that the item be received. Like I said, especially in light of the fact that the appeal is pending and there is an investigation that is currently going on.

Chair Chock: Okay, *mahalo*. Thank you for your additional perspective and voice. I know that we are about ready to take a caption break, B.C., and change the tape as well. Do you want to do that now? Okay.

There being no objections, the Committee recessed at 3:39 p.m.

The meeting was called back to order at 3:49 p.m., and proceeded as follows:

Chair Chock: We had a request to call up the County Attorney. Al Castillo, can you please come up for some questions from the Councilmembers and I think that Councilmember Kagawa has the first question.

Mr. Kagawa: Thank you, Chair.

ALFRED B. CASTILLO, JR., County Attorney: Good Afternoon.

Mr. Kagawa: Good Afternoon.

Mr. Castillo: Vice Chair, Councilmembers, Al Castillo, County Attorney.

Mr. Kagawa: Thank you, Al. I am going to play like I am a member of the public, is this for past bills or upcoming bills, this five hundred thousand dollars (\$500,000) that is being requested.

Mr. Castillo: Bill No. 2531 is the normal procedure in where we, the County Attorney's Office, we try to replenish the funding for Special Counsel. So this would entail paying for invoices that we have not paid yet and in anticipation of other invoices that we know will come in for existing cases and other cases.

Mr. Kagawa: Do you have an estimate or breakdown of how much of the five hundred thousand dollars (\$500,000) is for bills already incurred and how much is expected to be incurred?

Mr. Castillo: We have already supplied you with that information and that was prepared by two deputies, former First Deputy Amy Esaki and what was produced for you was sent to you from Jennifer Winn which I believe the amount that are invoiced, the bills that we have not paid yet amounts to approximately two hundred ten to two hundred eleven thousand dollars (\$210,000 - \$211,000).

Mr. Kagawa: So the other two hundred ninety thousand dollars (\$290,000) is for bills that we expect to incur soon.

Mr. Castillo: Because we have already run out of money, we do not have money and we need that to continue defending the County. I can expect more to be expended in addition to the two hundred ten thousand dollars (\$210,000), absolutely.

Mr. Kagawa: So out of the two hundred ninety thousand dollars (\$290,000) that is not for current bills, do you expect the two hundred ninety thousand dollars (\$290,000) will carry you through June 30, 2014?

Mr. Castillo: I cannot predict the future. What I can tell you is I remember going in front of the Cost Control Commission two (2) months after the fiscal year started, so this was July 1st when the fiscal year started and already when two (2) months had already passed, we had already expended the sum that was given to us which was five hundred thirty-four thousand dollars (\$534,000) so I cannot tell you. It all depends on the cases that we have ongoing and it all depends on their invoices plus other cases that we have not yet finished. I do not have a crystal ball, I cannot tell you. I cannot commit to you that is all we are going to use or we are going to use half but I know we will have further additional invoices to pay.

Mr. Kagawa: I believe the two hundred ten thousand dollars (\$210,000) is done. If we do not pay those bills, we will get sued for non-payment of services rendered, which I believe we should not even allowed them to proceed with that two hundred ten thousand dollar (\$210,000) in services knowing that we did not have money to pay it; however, I think it probably was a prior practice to allow cases not to stop and we assumed approval in the future. I am more worried that the two hundred ninety thousand dollars (\$290,000) as we come up with every other item and specify that we are requesting fifty thousand dollars (\$50,000) for this case, I would feel more comfortable. At least the public is given notice as to what cases that money are being spent on. Just to say two hundred ninety thousand dollars (\$290,000) is for bills that we expect to pay or possibly a buffer to last us the rest of the fiscal year, I think we need some accountability at the Council.

Mr. Castillo: Yes, and I believe for the past several weeks we have gone back and forth with the Council. We have received communication from the Council Chair and I have met with our Finance Department because this is a problematic area.

Mr. Kagawa: Like I said, I do understand that this year has been a highly unusual year. We have had a lot of cases that have expended a lot of money but it just scares me that we go in just with three (3) months left to go in the year and you are sitting here telling me that you are not sure whether another half a million dollars (\$500,000) to hire outside counsel is going to last us. We just cannot give the attorneys' free reign to just keep billing us. If I was an

outside attorney, I would like that kind of client where I can just bill unlimited. I think at some point we need to figure out which attorneys are doing that to us and look for other attorneys that will give us a better bang for our buck because I am not seeing much success with the outside counsel to be honest. They might disagree but as far as the Bynum case, I was not satisfied with our services and the amounts of the bill. You know better than I would, I am a school teacher, I am not an attorney but I just feel like sometimes we are getting billed for one hundred thousand dollars (\$100,000) and it just does not match up the amount of work that they have done. It kind of troubles me.

Mr. Castillo: Councilmember Kagawa, we all have our pocketbooks to look at, we all have "x" amount of dollars to spend and I can see where you are coming from. Thank you.

Mr. Kagawa: Thank you.

Chair Chock: Councilmember Rapozo.

Mr. Rapozo: Thank you. Al, I may have gotten this, I do not remember getting it but I was just handed this by Councilmember Chock, which there is a breakdown of one (1), two (2), three (3), four (4) five (5) cases that we owe money to. I am just looking at this sheet here and I do not know why it is marked confidential because I do not believe this should be confidential but it is marked so I am not going to list the name of the case but I will tell you that there are five (5) cases here that are showing that the appropriated funds, the expenditures, the balance, what the Council authorized, and pending invoiced amounts. I guess my question is today we have a money bill and the perception of the money bill is that we need to approve these funds so that you can pay off some bills but what typically happens on this body is an item gets sent here, the caption is on the agenda and at that moment the Council determines whether or not we are going to authorize the retention of that Special Counsel. So this does not give us the opportunity because obviously it is all grouped up in a five hundred thousand dollar (\$500,000) amount, but by approving this money bill are you saying that we have approved the retentions? In other words, the County Attorney comes up, and in this morning session there was one in open session that was cancelled, that was for one (1) of the cases, but that is the proper way. Come up authorization for this "x" amount of dollars for this specific case.

Mr. Castillo: I understand.

Mr. Rapozo: Does that mean if we approved this bill that we are saying that we authorize the...

Mr. Castillo: No, no. I believe that we are discussing apples and oranges and let me tell you the reason why. Number one is, in the event that we needed to come to you for Special Counsel for a particular case, yes, I firmly believe that we would come to you and tell you we got sued, this is the case, and we need "x" amount of dollars and then we will go into Executive Session and tell you. This here is just a money bill to replenish our Special Counsel account. The listing we have for you there is to demonstrate to you that we have bills that have not been paid. So all we are telling you, the Council, is that we have bills that we have not paid yet, to the amount of two hundred ten thousand dollars to two hundred eleven thousand dollars (\$210,000 - \$211,000). We may need more money to go into that fund. We will not be...anytime we have an invoice to pay, we come back to you and we ask for your authorization to pay. In essence what I am saying is that just for an example the two hundred ninety thousand dollars (\$290,000) in the event there are more invoices that come in, we will come to the Council and ask for authorization and give you a basis for the request. In the event that we get another lawsuit filed against us and in the event that we cannot defend ourselves and we need special counsel we will come before you. So that is what it is. It is not a mystery and that is how we normally come before this Council to replenish an account.

Mr. Rapozo: But that is not normal, Al. This is the first time we have done it this way. You have always come to get authorization to expend.

Mr. Castillo: But this is not authorization to expend. This is authorization...we want to replenish our account.

Mr. Rapozo: So why would you not, and I am going to use this case right here, the case is public record. I will use this case here...we authorized, the Council authorized fifty thousand dollars (\$50,000). Fifty thousand dollars (\$50,000), that is what this Council agreed. So you guys came up and said we have to hire Special Counsel so we put it on the agenda with the case name and we authorized fifty thousand dollars (\$50,000). We get the briefing and approved fifty thousand dollars (\$50,000). This case is showing that, expenditures so far, forty-nine thousand nine hundred forty-seven dollars and ninety-four cents (\$49,947.94) with a balance of forty-two dollars and six cents (\$42.06) and we owe them seventeen thousand eight hundred fifty-eight dollars (\$17,858). That is an invoice, that attorney worked seventeen thousand eight hundred fifty-eight dollars and twelve cents (\$17,858.12) more than was authorized. That is the concern.

Mr. Castillo: Okay, I see what you mean. I cannot tell you how many of the pending invoices we have already received authorization from Council. What I can tell you is that any invoice that we receive and when we go over the amount, we come to Council. In every contract, you know as well as I do, the people that we contract with we advise them that you need to let us know right

away, keep us current, keep us abreast because this is an ongoing problem. We are addressing the problem.

Mr. Rapozo: Does the contract not require them to submit monthly bills?

Mr. Castillo: The contract tells them that when they come close they should tell us.

Mr. Rapozo: No, no. Does the contract not require them to submit monthly bills?

Mr. Castillo: I do not want to do a general... I have to review the contract and see exactly what it says. I do not want to speculate.

Mr. Rapozo: That is what I was told, actually by your office and I would think that whoever is the manager of that contract...I mean if it is fifty thousand dollars (\$50,000) authorized and they are at thirty thousand dollars (\$30,000) or twenty-five thousand dollars (\$25,000) that should trigger a visit here.

Mr. Castillo: It does.

Mr. Rapozo: It does not. That is why I am showing all these outstanding amounts and that is why I am concerned because a blanket approval of this five hundred thousand dollars (\$500,000), in my opinion, should be specified for the specific case to give the public an opportunity to testify. Those votes should be taken here for that specific case. That is how it has been done here, as long as I have been here. But that is not what this is...

Mr. Castillo: Okay. When we receive the invoice we do the best we can to apprise the Council so that it can get on the agenda. When it gets the agenda, there are times when they have already gone the amount and the Council has not yet approved.

Mr. Rapozo: And are we obligated to pay them?

Mr. Castillo: I would say that we are obligated to pay them if they are defending the County. If they are shirking their duties...because the number one (1) priority for me is that they defend the County. I cannot tell them to stop right in the middle of a hearing because you have gone overtime.

Mr. Rapozo: No, but these cases...

Mr. Castillo: I know but...

Mr. Rapozo: Al, but you can come here.

Mr. Castillo: Yes, we do!

Mr. Rapozo: You can come here before they reach that point. That is what I am saying. That has not been done.

Mr. Castillo: And we ask them to do that and we submit as soon as we can. We do the best we can in submitting and asking for agenda time. But the utmost priority is for these Special Counsel to defend the County.

Mr. Rapozo: I am not disagreeing with you, Al, but I am saying that they do not create one hundred and fifteen thousand dollars (\$115,000) balance overnight. They do not accumulate one hundred and fifteen thousand dollars (\$115,000) of legal fees in a month. So my point is as you know, as the manager, whoever is managing that contract in your office, when they see that we are reaching that point, whether it is sixty percent (60%), I mean I would assume with the computers today somebody would get a notice saying we are at sixty-five percent (65%) of authorized amount from the Council, we better check into this and I do not think that is happening because if that was happening we would not be in this situation today.

Mr. Castillo: And again, like I said Councilmember Rapozo, when we obtain an invoice we send it over to the Council for the agenda.

Mr. Rapozo: Then we are not getting the invoices from the attorneys is what you are saying?

Mr. Castillo: We have all recognized that there is a problem, and we are working on it.

Mr. Rapozo: Then if they are not sending the invoice then again, I would assume if it is not authorized why would we be even incline to pay? If Goodfellow Brothers contracted with the County it is no different because they cannot stop paving the road in the middle of the project but they cannot just come up after the fact and say, "by the way that road job that we bid on, competitive bid and we got the contract, we need another one hundred fifty thousand dollars (\$150,000)."

Mr. Castillo: There are two (2) things that I am thinking about and looking at. One (1) is gross neglect in sending the invoices as compared to gross neglect in your duties in defending the County. I keep on reminding these counsels that they have to do what they have to do, that we really need your invoices as soon as possible and when we get them we pass it onto the Council. If

there is gross neglect in representation then to me that is a very serious matter and this matter of late invoices is serious and we are attending to it.

Mr. Rapozo: One (1) of these firms, Kobayashi, Sugita, they have two (2) cases that we owe money to, two (2) separate cases. If fact the third case we still have a balance but I do not know where we are at on the landfill case but two (2) of the three (3)...well two (2) of the cases on this list, three (3) of these cases actually are the same firm, same firm. That is gross negligence, I think if that same firm is not submitting invoices. Why do we even use them? They should not even be more than one (1). If the guy is not submitting his invoices on a monthly basis why would we even hire him again? But we did it three (3) times. We have them for three (3) cases and in fact outstanding bills to the tune of almost eighty thousand dollars (\$80,000). I think that is a problem. I think it is a huge problem. The other question is, as far as the posting as was stated earlier in testimony, are you aware that OIP complaint?

Mr. Castillo: Well, first of all on the OIP, to me the posting gives sufficient information for the general public. If there is a complaint to OIP then make an OIP complaint.

Mr. Rapozo: But you are not aware of the complaint?

Mr. Castillo: And what would happen? I am aware of the Kanahele case. The Kanahele case that was mentioned before is separate and apart and different from what is happening right here. The Kanahele case is something that went on and people were not permitted to speak on the item. It had nothing to do with not enough information for people to know what was going on. The Kanahele case was preventing people from speaking on the agenda item. And so as far as I am concerned, I have been in contact with OIP today.

Mr. Rapozo: Regarding this issue?

Mr. Castillo: No. Nobody has ever said if...the way that it works, if there was an OIP complaint and if OIP rendered an opinion on the complaint then at that...when we received the opinion if they say... they might say two (2) things, that the measure was void or the measure was voidable. But I do not want to speculate. We are not even that far yet. I believe that the testimony that you received regarding and OIP complaint was that Chair had time to respond and I do not know if the Chair actually did.

Mr. Rapozo: The only reason for my question is if there is a complaint filed and if we are anticipating an opinion from OIP do you recommend us moving forward with the item or should we hold off until we get an opinion from OIP? That was the question. I am not going to ask you to opine on...I mean I would

assume that you are saying the posting is correct because you folks make the posting, right?

Mr. Castillo: We looked at the posting and there is nothing to prevent this Council from voting on the measure. That is going to come up again next week or the week after. And to me the posting is sufficient. Nothing that is before you except for what Ms. Iseri just said would prevent you but this is money that we should...we have bills to pay and I think that we should pay.

Mr. Rapozo: Well I will tell you what the big difference is Al. Today as it is posted it requires four (4) votes to pass. It is a money bill. The way I interpret what you are trying to do with the attachment that I was just provided by Mr. Chock, no, it is to pay attorneys. It is to pay attorneys that have outstanding balances to the tune of two hundred ten thousand dollars four hundred eighty-one dollars (\$210,481) which would require five (5) votes. That is the difference. A money bill for replenishing of an account is four (4) votes. But we are trying to circumvent that because we need to authorize the individual cases. That is what we need to do and that requires five (5) votes. So I think that causes a huge problem that the posting should say request an additional in this case maybe one hundred twenty thousand dollars (\$120,000) for the Sheehan case. Request an additional seventy thousand dollars (\$70,000) for the Pasion case. Request another eighteen thousand dollars to twenty thousand dollars (\$18,000 - \$20,000) for the Tokuda case, in fact that one was on the agenda this morning for forty thousand dollars (\$40,000) that we never got to do. And then the other one for the Kaua'i Spring's case. So that is how it should be posted. That way we, the Council would give the authorization and the public would have the opportunity to come testify but this does not do that. This says here is the lump sum of money I only need four (4) of your votes, and we are not going to have to have the discussion on the case. I think that is not proper. I would ask that we really consider...I am saying that if we are going to approve any funds for these cases that it requires five (5) votes because it is funds for Special Counsel. It is not funds to go and buy typewriters and computers. Thank you.

Mr. Castillo: Excuse me. I think Mauna Kea had something to say.

Chair Chock: Response to that.

MAUNA KEA TRASK, Second Deputy County Attorney: Thank you, for the record, Second Deputy Attorney, Mauna Kea Trask. Regarding Councilmember Rapozo's comment as far as authorization of amounts, I do believe, at least I am aware of at least one (1) of these have been authorized previously. I think a couple of weeks ago we came before you. If we can we might be able to take a recess to confirm which has been authorized previously and what has not and that might

clarify some stuff but I do think that at least for one (1) of them, we did get authorization already.

Chair Chock: Thank you.

Mr. Rapozo: Real quick, the list I have, you are talking about Sygenta?

Mr. Trask: No.

Mr. Rapozo: Which one was that.

Mr. Trask: Sheehan.

Mr. Rapozo: How much did we approve? The hundred...

Ms. Yukimura: Yes, we approved.

Mr. Trask: Yes. This was two (2) weeks ago.

Chair Chock: So to clarify, some of this has been approve, so to speak, and we are just getting the money in order to replenish the account for it to be spent on future authorization. So the authorization will be forthcoming?

Mr. Trask: I believe so.

Mr. Castillo: But even that, this is a money bill and whatever was not authorized, we are going to come in for authorization anyway.

Ms. Yukimura: Question please.

Chair Chock: Councilmember Yukimura.

Ms. Yukimura: So by voting on this it is not allowing to spend anything that is not authorized.

Mr. Castillo: Correct.

Ms. Yukimura: How much of these expenditures...how much of the amount that we have already authorized still needs to be paid?

Mr. Trask: I know at least the Sheehan bill has been authorized that needs to be paid. I spoke briefly with Council staff and I believe that last three (3) have been authorized too. It is my understanding but I am not on

those cases so the only one (1) I can really speak about, I believe, is the first one but we can check.

Ms. Yukimura: Where you have expenditures on this memo that means that these have been authorized and they have already been paid? Is that correct?

Mr. Trask: I believe so, yes. This was prepared...that is my understanding.

Ms. Yukimura: And where there is pending invoiced amounts they could either have been authorized but some of them have not.

Mr. Trask: Correct because we did not have enough money in the account.

Ms. Yukimura: But for those that have not been authorized you will not be able to pay for them unless they are authorized.

Mr. Trask: We would have to come to this body for authorization. Correct.

Ms. Yukimura: Is there a way to put into your contract with Special Counsel that if they expend over what has been authorized that they are expending it at their risk?

Mr. Trask: Yes we can and also as previously stated by the County Attorney, we do have a litigation plan in budget sheet and also I heard today what Councilmember Rapozo said regarding setting of a sixty-five percent (65%) red flag essentially to come back to Council for agenda and for payment when we know that happens. I think those are great suggestions.

Ms. Yukimura: To me that is like a no brainer that should have been instituted long ago. On our side we institute that but if they are late in invoicing, so they already expend and then they invoice us, that is not our fault. So, on their side I think a provision in the contract that says they are at their own risk so that it gives them some incentive to invoice immediately and some do and maybe we are slow in anticipating the additional expenditures that need to be authorized for.

Mr. Trask: We think that is a great suggestion and thank you for that.

Ms. Yukimura: So the reason why it is only a four (4) vote issue is because you cannot spend from this fund without actual authorization...without separate and five (5) vote authorization.

Mr. Trask: As you say this is a money bill. That is not an authorization, an authorization is separate. We would have to go back to you for that.

Ms. Yukimura: Okay, thank you.

Chair Chock: Thanks for your clarification.
Councilmember Hooser.

Mr. Hooser: Yes, thank you. Thank you for being here. The posting may be what is normally posted and may satisfy Sunshine Law but it certainly would have been better if it would have at minimum said this amount is for already authorized or remaining amount is for future use. I think that is a big part of the issue here is we did not have the information from the original posting and so if we can do that in the future.

Mr. Castillo: Understood that we need to be more clear in the posting as best as we can.

Mr. Hooser: Thank you.

Chair Chock: Thank you. Are there any further questions for our County Attorneys? Are you sure? Yes, go ahead.

Mr. Rapozo: I guess for me the amount that you need to pay bills that were already authorized by this Council is two hundred ten thousand dollars (\$210,000)?

Mr. Trask: Again, in speaking with Council staff, I think the final three (3) have been authorized, the third, I am not sure but I would like to confirm that because I have only been really working on the first case, is mine. The others, I am not familiar with.

Mr. Rapozo: But we requested information on this quite a while ago.

Mr. Trask: Correct.

Mr. Rapozo: I mean, I believe this has been deferred now maybe...I do not know. At the first reading we had some questions and then we had some questions as well in Executive Session as related to some of those cases. I did get a response dated March 14, 2014 regarding the reconciliation regarding Special Counsel funds in the last couple of fiscal years. Interestingly enough the response was, "In order to respond to this question our office will need to seek clarification and guidance from the Department of Finance as to their accounting system. We are still working on providing you with a response." So I am not sure who keeps the records. I would think your office would keep the records on every case. I cannot imagine why Finance would be providing that information on a contract. I mean the contract management, and I know Steve is here, but I would assume the contract management is done in your office, right?

Mr. Trask:

That is correct.

Mr. Rapozo: So I am not sure why your office would have to go with Department of Finance for us to get a reconciliation of the cases. I am having a problem with that. But it is what it is. There has also been quite a few communications went over as far a reconciliation and you know we just do not have it.

Mr. Trask: I am not familiar with those opinions. I will make myself familiar with them so I may be able to speak about them.

Mr. Rapozo: They are not really opinions. They are requests from our office to your office. The first one dates back to...I do not know if it is the first one but the one that I have here dates back to September 2013 by then Council Vice Chair Nakamura. Basically saying that the request should be accompanied by a memo that should include; number 1, amount budgeted; number 2, amount spent; number 3, amount remaining and; number 4, amount being requested and an explanation. That was September 2013 and we are now in March 2014 and we still having problems reconciling our legal accounts and that is concerning. It is five hundred thousand dollars (\$500,000). That is a lot of money.

Chair Chock: Thank you. I think it is apparent that there is lot of work to be done here and so I appreciate what responses you had and also the suggestions coming forward. The only way to move forward is to get better at it. I believe we have a motion the floor here that is valid, that we can move on. Motion is to approve, we have a second and I think we need four (4) votes for this.

Ms. Yukimura:

Three (3) votes in Committee.

The meeting was called back to order, and proceeded as follows:

Mr. Rapozo: I am not convinced that in fact this money is not going to be used to pay bills that we did not authorized and that is why it is so rough when we do not have a breakdown and they cannot answer. That just concerns me. I believe there is only one vote (1) that was taken here on this body a few months ago four (4) votes for Special Counsel money that too me is invalid. Now, I do not want to be stuck in that again. I know this is only the Committee but I do not think that we got the answers. I did not get the answers that I was satisfied with. I still believe that these money's are for cases that we possibly did not authorize and the numbers that I have read from the sheet that you provided, we are definitely over what was authorized in at least a few of those cases. Unless there is more information that we do not have it is difficult for me. These contracts, Councilmember Yukimura, I think you asked about putting something in, I believe the contract, I did see a separate contract from Jennifer Winn and I think I got that last week and the sample one that I got was not specific to any one of these cases but the sample one was very clear that the contractor needed to submit monthly invoices and that in fact they were not to do any work beyond the contract terms. We are not managing the contract. That is what is happening. We are not managing the contracts. And in a time when we want to increase fees, one hundred thousand dollars (\$100,000) here and three hundred thousand dollars (\$300,000) here but yet we are spending money that is not approved. We are spending money that is not authorized. If we tightened up the ship maybe we do not have to raise that fee. Maybe we do not have to raise that tax, but we keep doweling out the money and I am not going to do it no more. I am voting no today and I am voting no next week. They can go get the money somewhere else, vacant salaries, wherever they have money but they are not going to get it from the surplus. I am done. To come up and ask for five hundred thousand dollars (\$500,000) and sit up there and say I do not know, I have not seen this that is not appropriate. It is not appropriate, I am not going to do it and it is time, we as a Council who is supposed to be in charge of the purse strings say that is just not enough justification at this point. That is five hundred thousand dollars (\$500,000), that is not twenty-five thousand dollars (\$25,000) it is five hundred thousand dollars (\$500,000). There is four (4) of us here, I think everyone is on the Committee here, right?

Chair Chock: Yes.

Mr. Rapozo: I am not supporting this.

Chair Chock: I think, if I could just...I do not know if we asked this question of the County Attorneys but in terms of timing, if we were to defer this Bill to get some of the answers that we obviously need in terms of the management of this contract and specifics do you have any feedback about that?

Mr. Trask: If I had my wish I would request that it be approved now and then I would like to meet with all of you and get your *manao* on how to improved this and move forward better. However, Councilmember Rapozo is

right, you do hold the purse strings. The decisions you make today are decisions that will be made but that is the best I can answer your question.

Chair Chock: So in terms of timing and paying our bills for these Special Counsel though, are we on a timeframe, will we be in default if we do not move through this? What does it look like for us in terms of the decision process?

Mr. Trask: They are just late and then I guess...

Ms. Yukimura: One hundred fifteen thousand dollars (\$115,000) late.

Mr. Trask: Yes and especially that case. We did go to trial, we were successful, there is an expert witness that needs to be paid. I just think that I would like to pay those bills and that is all I can say.

Chair Chock: Councilmember Yukimura followed by Councilmember Hooser.

Ms. Yukimura: If I added correctly, if you owe one hundred and fifteen thousand dollars (\$115,000), which I do believe is already authorized, so there is about ninety-five thousand dollars (\$95,000) left out of the two hundred and ten thousand dollars (\$210,000)? Between now and the Council meeting next week, I think we want to get information about how much of this invoiced amount has been authorized or not authorized and I think you might be wise to show us how much also has been authorized and is likely to be spent before the end of the fiscal year in other cases then what you have listed here. Because I think we have authorized in other cases... I mean this is about the functioning of the County Attorney's Office on amounts we have authorized but has not been invoiced but are likely to be invoiced between now and the end of the fiscal year. That is very valid to ask for. It requires some speculation and estimation but some of your Special Counsel would be able to give you some estimates, I am guessing for the ones that trials are coming up in the next few months or discovery work or whatever and it is not limited to these cases listed here. That is what you are talking about. I agree with Councilmember Rapozo and I think the whole Council does not like this idea of spending over the authorized limits. That is not right and yes we want to hear how you are going to address that. I think you are talking about more than that and just for this list here I would like to know how much has been authorized and how much has not been authorized of the two hundred ten thousand dollars (\$210,000) that you have been invoiced for. That will also give us an indication of extent of the problem.

Mr. Castillo: In addition to what Mauna Kea just said if in terms of timing and I am not sure if all of the contracts contains and interest amount if we do not pay but if the Council will give us time and defer this to next week and we can get that information and do an accounting for you on exactly what Councilmember Yukimura just requested, I think we could accomplish that.

Ms. Yukimura: We are not talking about deferring it we are talking about passing it out of Committee to the Council floor but you guys have to have that information at the next meeting so that Councilmembers will feel comfortable in voting for it.

Mr. Castillo: We can have that information for you.

Ms. Yukimura: Good. Thank you.

The meeting was called back to order, and proceeded as follows:

Chair Chock: Councilmember Hooser.

Mr. Hooser: Yes. A part of this discussion, I guess, is addressed to the County Attorney's Office. The information it is kind of indicative of the conversations that we have been having over the last few months in terms of consistently expressing frustration that we are getting bills after the fact if you would. So the information that I think we should see is what has been authorized, that we voted on...you know authorized; what has been incurred but not authorized, that we owe and that could be estimated. What is expected, if these funds are to get us through the end of the fiscal year but what has been authorized, what has been incurred is hard money that we are obligated for. And so I think that we need to know that and we need to have an expectation of what the rest of the year is going to bring, if this money is going to be sufficient or not. It seems like there is no reason why we cannot have our Special Counsel have firm instructions to say we are bumping up against the ceiling pretty soon, we are almost there at the seventy-five thousand dollars (\$75,000) so therefore...and so we can come up with another authorization rather than consistently being in this situation. I will just share those thoughts with you and I believe regardless of the vote, assuming we vote in the Committee, regardless of the vote it will pass forward to the full Council and I would concur with Councilmember Yukimura that we can vote whatever here, we do not need four (4) votes. I do not know if we need any votes. Then deal with it in the full Council and if it needs to be further deferred at that point, if the information is not sufficient, whatever at least we move it forward a week rather than to defer it for two (2) weeks. That would be my suggestion. Thank you.

Chair Chock: Yes, thank you. It is like a catch-22 because we need to move forward on some of these items and yet I totally agree with the sentiment of Councilmember Rapozo. I have to believe that we can get better again and that we have to give some time to do this and so I am going to put my trust in that and see that we can continue to have the discussion. At one (1) point of another we will need to see these things occur so that we can feel comfortable about supporting everything that we get into. We will take a vote on it and see where it lands. Councilmember Rapozo.

Mr. Rapozo: Thank you. Councilmember Chock and even maybe Councilmember Hooser have been here, you have been here almost a whole term but this is not new. I think Councilmember Yukimura can attest to that fact that this is a constant discussion and request almost in every single executive session that we have had, and every single request we have had. Just so that the members understand because you were all asking if they need more time and February 14, 2014 is when the communication...that is more than a month ago. That is almost five (5) weeks ago and it was, "please provide a detailed reconciliation to include but limited to the case or issue, law firm amounts billed and paid, etc. of Special Counsel funds used in fiscal year 2012-2013 and fiscal year 2013-2014." What you are asking for was already asked is what I am trying to say and that was asked five (5) weeks ago. I would think that if I am asking you all for five hundred thousand dollars (\$500,000) I would answer your questions but because they know that they are going to get the votes they relax. But let us send a message, it is going to the full Council. Even if it dies here today in Committee it shows us next week. How else do we put pressure on them to answer our questions? Five (5) weeks for a spreadsheet, I do not think is unreasonable. That request, I think should be able to be done in a day. I bet you if I ask our staff right here, Ashley, do me a favor go pull all of the agenda items for the last fiscal year or last two (2) years of all the communications that came over from the County Attorney, all of the request that came over, the case numbers, I want a spreadsheet, she would have that done, well not by 4:30 p.m. because it is already passed but by tomorrow she would have that for me. This is five (5) weeks. Are we just going to approve it anyway? Our back is against the wall. I do not think so. I think we send a message; we say no and let them come up next week and show us what we have been asking for a long time. This is just the last request. This is the last request and that came after the last meeting. This matter was deferred so it is not like this is the first time it showed up on the agenda. Thank you.

Chair Chock: Any further discussion? If not, I call for a roll call vote.

The motion to approve Bill No. 2531 was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Yukimura	TOTAL – 2*,
AGAINST APPROVAL:	Hooser, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Kagawa	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Chock is noted as voting silent but shall be recorded as an affirmative vote for the motion.)*

Ms. Yukimura: It will stay in Committee unless there is a negative...

Mr. Rapozo: What is the status of Councilmember Kagawa? Is he still here? Is he excused? He left. So, the quorum is four (4)? So, 2:2 automatically defers it.

Mr. Hooser: No, wait.

Mr. Rapozo: No, it just stays in Committee?

Mr. Hooser: Does the "silent" not go with the majority?

Mr. Rapozo: It goes with the motion. So, if the motion was to approve, so...it is 2:2.

Chair Chock: Alright, we will be back in two (2) weeks to discuss this. Next item.

The Committee proceeded on its agenda items, as shown in the following Committee Reports which are incorporated herein by reference:

CR-FED 2014-18: on Bill No. 2532 A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-754, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND – CIP AND SPECIAL TRUST FUND – CIP FOR PARKS & PLAYGROUNDS (*Black Pot Condemnation Balance - \$1,259,905*) (*Approved.*)

There being no further business, the meeting was adjourned at 4:42 p.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on April 2, 2014:



MASON K. CHOCK, SR.
CHAIR, FED COMMITTEE